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11 TODD SHIPYARDS CORPORATION

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RUDOLPH HANNA

Plaintiff,

vs.

GENERAL ELECTRIC COMPANY,  
TODD SHIPYARDS CORPORATION,  
NATIONAL STEEL AND  
SHIPBUILDING COMPANY,

Defendants.

CASE NO. CV 08-0980 EDL

**ANSWER OF DEFENDANT TODD  
SHIPYARDS CORPORATION TO  
PLAINTIFF'S COMPLAINT FOR  
ASBESTOS PERSONAL INJURY/  
PRODUCTS LIABILITY**

COMES NOW Defendant Todd Shipyards Corporation ("TODD"), and for an Answer to Plaintiff RUDOLPH HANNA's ("Plaintiff") Complaint for Negligence (Personal Injury), and Products Liability, admits, denies and alleges as follows:

**THE PARTIES**

1. Answering Paragraph 1 of the Complaint, TODD is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and, on that basis, denies generally and specifically, each and every allegation contained therein.

2. Answering Paragraph 2 of the Complaint, TODD is without sufficient knowledge or

1 information to form a belief as to the truth of the allegations contained in said paragraph, and, on that  
2 basis, denies generally and specifically, each and every allegation contained therein.

3 3. Answering Paragraph 3 of the Complaint, TODD is without sufficient knowledge or  
4 information to form a belief as to the truth of the allegations contained in said paragraph, and, on that  
5 basis, denies generally and specifically, each and every allegation contained therein.

6 4. Answering Paragraph 4 of the Complaint, TODD denies generally and specifically,  
7 that Plaintiff's claims arise out of a similar series of occurrences. TODD is without sufficient  
8 knowledge or information to form a belief as to the truth of the remaining allegations contained in  
9 said paragraph, and, on that basis, denies generally and specifically, each and every allegation  
10 contained therein.

11 5. Answering Paragraph 5 of the Complaint, TODD denies generally and specifically,  
12 that Plaintiff's claims arise out of an identical series of occurrences. TODD is without sufficient  
13 knowledge or information to form a belief as to the truth of the remaining allegations contained in  
14 said paragraph, and, on that basis, denies generally and specifically, each and every allegation  
15 contained therein.

16 6. Answering Paragraph 6 of the Complaint, TODD is without sufficient knowledge or  
17 information to form a belief as to the truth of the allegations contained in said paragraph, and, on that  
18 basis, denies generally and specifically, each and every allegation contained therein.

19 7. Answering Paragraph 7 of the Complaint, TODD admits that it is a Corporation existing  
20 under the laws of other states, and that it is authorized to conduct business in the State of California  
21 and the County of San Francisco, but denies it is presently conducting business in the State of  
22 California, and, unless expressly admitted herein, TODD denies each and every remaining allegation  
23 in said paragraph.

24 **JURISDICTION, VENUE AND INTRADISTRICT ASSIGNMENT**

25 8. Answering Paragraph 8 of the Complaint, TODD admits that this Court has  
26 jurisdiction over the subject matter of Plaintiff's Complaint under 25 U.S.C. Section 1332 because,  
27 based on the allegations in the pleadings, there is complete diversity and an actual or substantial  
28 controversy exists between citizens of different states, and, unless expressly admitted herein, TODD

1 denies each and every remaining allegation in said paragraph.

2       9.       Answering Paragraph 9 of the Complaint, TODD is without sufficient knowledge or  
3 information to form a belief as to the truth of the allegations contained in said paragraph, and, on that  
4 basis, denies generally and specifically, each and every allegation contained therein.

5                                   **CAUSES OF ACTION**

6                                   **FIRST CAUSE OF ACTION – NEGLIGENCE**

7       10.       Answering Paragraph 10 of the Complaint, TODD denies generally and  
8 specifically, that TODD SHIPYARDS CORPORATION, TODD PACIFIC SHIPYARDS  
9 CORPORATION, or SEATTLE-TACOMA SHIPBUILDING CORP. researched, studied,  
10 manufactured, fabricated, designed, modified, labeled, assembled, distributed, leased, bought, offered  
11 for sale, supplied, sold, inspected, tested, authorized, approved, certified, facilitated, promoted,  
12 represented, endorsed servicing, installed, contracted for installation, repaired, marketed, warranted,  
13 rebranded, manufactured for others, packaged, specified, required, mandated, or otherwise directed  
14 and/or facilitated the use of, or advertised a certain product, namely asbestos, and/or other products  
15 containing asbestos. TODD admits that TODD PACIFIC SHIPYARDS CORPORATION is a  
16 wholly owned subsidiary of TODD SHIPYARDS CORPORATION. SEATTLE-TACOMA  
17 SHIPBUILDING CORP. merged into TODD SHIPYARDS CORPORATION in 1946. TODD is  
18 without sufficient knowledge or information to form a belief as to the truth of the remaining  
19 allegations contained in said paragraph, and, on that basis, denies generally and specifically, each and  
20 every allegation contained therein.

21       11.       Answering Paragraph 11 of the Complaint, TODD denies generally and  
22 specifically, that TODD SHIPYARDS CORPORATION, TODD PACIFIC SHIPYARDS  
23 CORPORATION, or SEATTLE-TACOMA SHIPBUILDING CORP. researched, manufactured,  
24 fabricated, designed, modified, labeled, assembled, distributed, leased, bought, offered for sale,  
25 supplied, sold, inspected, endorsed, tested, authorized, approved, certified, facilitated, promoted,  
26 represented, serviced, installed, contracted for installation, repaired, marketed, warranted, rebranded,  
27 manufactured for others, packaged, specified, required, mandated, or otherwise directed and/or  
28 facilitated the use of, or advertised a certain product, namely asbestos, and/or other products

1 containing asbestos. TODD is without sufficient knowledge or information to form a belief as to the  
2 truth of the remaining allegations contained in said paragraph, and, on that basis, denies generally  
3 and specifically, each and every allegation contained therein.

4 12. Answering Paragraph 12 of the Complaint, TODD denies generally and specifically,  
5 each and every allegation therein.

6 13. Answering Paragraph 13 of the Complaint, TODD denies generally and specifically,  
7 that it owed a duty to Plaintiffs and that it breached said duty of care.

8 14. Answering Paragraph 14 of the Complaint, TODD denies generally and specifically,  
9 each and every allegation therein.

10 15. Answering Paragraph 15 of the Complaint, TODD is without sufficient knowledge  
11 or information to form a belief as to the truth of the allegations contained in said paragraph, and, on  
12 that basis, denies generally and specifically, each and every allegation contained therein.

13 16. Answering Paragraph 16 of the Complaint, TODD is without sufficient knowledge  
14 or information to form a belief as to the truth of the allegations contained in said paragraph, and, on  
15 that basis, denies generally and specifically, each and every allegation contained therein.

16 17. Answering Paragraph 17 of the Complaint, TODD is without sufficient knowledge  
17 or information to form a belief as to the truth of the allegations contained in said paragraph, and, on  
18 that basis, denies generally and specifically, each and every allegation contained therein.

19 18. Answering Paragraph 18 of the Complaint, TODD is without sufficient knowledge  
20 or information to form a belief as to the truth of the allegations contained in said paragraph, and, on  
21 that basis, denies generally and specifically, each and every allegation contained therein.

22 19. Answering Paragraph 19 of the Complaint, TODD is without sufficient knowledge  
23 or information to form a belief as to the truth of the allegations contained in said paragraph, and, on  
24 that basis, denies generally and specifically, each and every allegation contained therein.

25 20. Answering Paragraph 20 of the Complaint, TODD is without sufficient knowledge  
26 or information to form a belief as to the truth of the allegations contained in said paragraph, and, on  
27 that basis, denies generally and specifically, each and every allegation contained therein.

28 21. Answering Paragraph 21 of the Complaint, TODD is without sufficient knowledge

1 or information to form a belief as to the truth of the allegations contained in said paragraph, and, on  
2 that basis, denies generally and specifically, each and every allegation contained therein.

3 22. Answering Paragraph 22 of the Complaint, TODD denies generally and specifically,  
4 each and every allegation therein.

5 23. Answering Paragraph 23 of the Complaint, TODD denies generally and specifically,  
6 each and every allegation therein.

7 24. Answering Paragraph 24 of the Complaint, TODD denies generally and specifically,  
8 each and every allegation therein.

9 **SECOND CAUSE OF ACTION - PRODUCTS LIABILITY**

10 25. Answering Paragraph 25 of the Complaint, TODD incorporates and realleges its  
11 responses to paragraphs 1 through 24 as though fully set forth herein.

12 26. Answering Paragraph 26 of the Complaint, TODD denies generally and specifically,  
13 each and every allegation therein.

14 27. Answering Paragraph 27 of the Complaint, TODD is without sufficient knowledge  
15 or information to form a belief as to the truth of the allegations contained in said paragraph, and, on  
16 that basis, denies generally and specifically, each and every allegation contained therein.

17 28. Answering Paragraph 28 of the Complaint, TODD is without sufficient knowledge  
18 or information to form a belief as to the truth of the allegations contained in said paragraph, and, on  
19 that basis, denies generally and specifically, each and every allegation contained therein.

20 29. Answering Paragraph 29 of the Complaint, TODD is without sufficient knowledge  
21 or information to form a belief as to the truth of the allegations contained in said paragraph, and, on  
22 that basis, denies generally and specifically, each and every allegation contained therein.

23 30. Answering Paragraph 30 of the Complaint, TODD is without sufficient knowledge  
24 or information to form a belief as to the truth of the allegations contained in said paragraph, and, on  
25 that basis, denies generally and specifically, each and every allegation contained therein.

26 31. Answering Paragraph 31 of the Complaint, TODD is without sufficient knowledge  
27 or information to form a belief as to the truth of the allegations contained in said paragraph, and, on  
28 that basis, denies generally and specifically, each and every allegation contained therein.

1           32.     Answering Paragraph 32 of the Complaint, TODD is without sufficient knowledge  
2 or information to form a belief as to the truth of the allegations contained in said paragraph, and, on  
3 that basis, denies generally and specifically, each and every allegation contained therein.

4           33.     Answering Paragraph 33 of the Complaint, TODD denies generally and specifically,  
5 each and every allegation therein.

6           34.     Answering Paragraph 34 of the Complaint, TODD is without sufficient knowledge  
7 or information to form a belief as to the truth of the allegations contained in said paragraph, and, on  
8 that basis, denies generally and specifically, each and every allegation contained therein.

9           35.     Answering Paragraph 35 of the Complaint, TODD is without sufficient knowledge  
10 or information to form a belief as to the truth of the allegations contained in said paragraph, and, on  
11 that basis, denies generally and specifically, each and every allegation contained therein.

12           36.     Answering Paragraph 36 of the Complaint, TODD is without sufficient knowledge  
13 or information to form a belief as to the truth of the allegations contained in said paragraph, and, on  
14 that basis, denies generally and specifically, each and every allegation contained therein.

15                   **AFFIRMATIVE DEFENSES**

16                   **FIRST AFFIRMATIVE DEFENSE**

17           AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
18 TODD alleges that the Complaint fails to state facts sufficient to constitute a cause of action against  
19 TODD.

20                   **SECOND AFFIRMATIVE DEFENSE**

21           AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
22 TODD alleges that Plaintiff has failed to join all persons and parties needed for a just adjudication  
23 of this action.

24                   **THIRD AFFIRMATIVE DEFENSE**

25           AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
26 TODD alleges that Plaintiff's claims are barred by laches, waiver and/or estoppel.

27                   **FOURTH AFFIRMATIVE DEFENSE**

28           AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,

1 TODD alleges that the entirety of Plaintiff's claims against TODD are negated by the "government  
2 contractor" defense, including any performance contracts. (*Yearsley v. W.A. Ross Construction Co.*,  
3 309 U.S. 18 (1940); *Boyle v. United Technologies*, 487 U.S. 500 (1988); *Emory v. McDonnell*  
4 *Douglas Corp.*, 148 F.3d 347 (4<sup>th</sup> Cir. 1998).)

5 **FIFTH AFFIRMATIVE DEFENSE**

6 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
7 TODD alleges that Plaintiff has failed to commence this action within the time required by the  
8 applicable statutes of limitation, including but not limited to California Code of Civil Procedure  
9 Sections 337.1, 337.15, 338(a), 338(d), 340.2, 343, 583.110, 583.210, 583.310, 583.410, and  
10 Commercial Code § 2725.

11 **SIXTH AFFIRMATIVE DEFENSE**

12 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
13 TODD alleges that Plaintiff's damages, if any, were proximately caused, in whole or in part, by  
14 Plaintiff's own fault and negligence in failing to exercise reasonable care for his own safety.  
15 Plaintiff's recovery from TODD, if any, should therefore be reduced proportionate to Plaintiff's  
16 comparative fault.

17 **SEVENTH AFFIRMATIVE DEFENSE**

18 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
19 TODD alleges that Plaintiff has failed to mitigate the alleged damages, if any there were.  
20 Accordingly, the amount of loss, injury or damages to which Plaintiff is entitled, if any, should be  
21 reduced by the amount of loss, injury or damages which would have otherwise been mitigated and  
22 Plaintiff is barred from any recovery of any loss, injury or damages suffered thereby.

23 **EIGHTH AFFIRMATIVE DEFENSE**

24 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
25 TODD alleges that if Plaintiff was injured by products used or installed by TODD, which is denied,  
26 such injury occurred after the expiration of the useful safe life of such products.

27 **NINTH AFFIRMATIVE DEFENSE**

28 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,



1 TODD alleges that if Plaintiff suffered any damages, which is denied, such damages were the sole  
2 and proximate result of an unavoidable accident.

3 **TENTH AFFIRMATIVE DEFENSE**

4 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
5 TODD alleges that if Plaintiff suffered any damages, which is denied, such damages were caused  
6 by and/or contributed to Plaintiff's misuse of the product(s) which he used, and therefore Plaintiff's  
7 recovery should be barred or reduced accordingly.

8 **ELEVENTH AFFIRMATIVE DEFENSE**

9 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
10 TODD alleges that if Plaintiff suffered any damages, which is denied, such damages were solely and  
11 proximately caused by and/or contributed to the negligence of third persons or entities over whom  
12 or which TODD had no control or supervision. Therefore, Plaintiff's damages, if any, are barred or  
13 reduced by the percentage of all responsibility attributable to such third parties.

14 **TWELFTH AFFIRMATIVE DEFENSE**

15 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
16 TODD alleges that if Plaintiff suffered any damages, which is denied, such damages were solely and  
17 proximately caused by material modifications or alterations of the product(s) involved in this action  
18 after it or they left the custody and control of Defendant TODD.

19 **THIRTEENTH AFFIRMATIVE DEFENSE**

20 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
21 TODD alleges that any asbestos-containing product(s) alleged to have caused Plaintiff's injuries,  
22 were manufactured, used, installed and/or distributed in mandatory compliance with specifications  
23 promulgated by the United States government under its war powers, as set forth in the U. S.  
24 Constitution, and that any recovery by Plaintiff is barred as a consequence of the exercise of those  
25 sovereign powers.

26 **FOURTEENTH AFFIRMATIVE DEFENSE**

27 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
28 TODD alleges that any product(s) alleged to have caused Plaintiff's injuries, were manufactured,



1 installed, used or distributed in compliance with specifications provided by third parties to TODD  
2 and/or in compliance with all applicable health and safety statutes and regulations.

3 **FIFTEENTH AFFIRMATIVE DEFENSE**

4 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
5 TODD alleges that if Plaintiff suffered any damages, which is denied, the risk of any such damages  
6 was not foreseeable to TODD. At all times material hereto, TODD acted in accordance with the state  
7 of scientific knowledge available to installers and/or users of asbestos-containing products.

8 **SIXTEENTH AFFIRMATIVE DEFENSE**

9 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
10 TODD alleges that, with respect to the product(s) allegedly supplied, distributed, manufactured  
11 and/or sold by TODD, alleged by Plaintiff to have caused Plaintiff's loss, injury or damages, TODD  
12 received no notice of any dangerous, hazardous or defective condition, or any breach of warranty,  
13 either expressed or implied.

14 **SEVENTEENTH AFFIRMATIVE DEFENSE**

15 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
16 TODD alleges that Plaintiff's claims against TODD are barred by the holdings of *Kinsman v.*  
17 *Unocal Corp.* (2005) 37 Cal.4th 659, *Camargo v. Tjaarda Dairy* (2001) 25 Cal.4th 1235, *Bockrath*  
18 *v. Aldrich Chemical Co.* (1999) 21 Cal.4th 71, *Toland v. Sunland Housing Group, Inc.* (1998) 18  
19 Cal.4th 253, and *Privette v. Superior Court* (1993) 5 Cal.4th 689.

20 **EIGHTEENTH AFFIRMATIVE DEFENSE**

21 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
22 TODD alleges that Plaintiff's exposure to any asbestos-containing product(s) allegedly used,  
23 installed, manufactured, supplied and/or distributed by TODD was minimal and insufficient to  
24 establish the probability that said product(s) were a legal cause of Plaintiff's alleged injuries.

25 **NINETEENTH AFFIRMATIVE DEFENSE**

26 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
27 TODD alleges that this action is barred by the applicable state and/or federal industrial insurance  
28 and/or Workers' Compensation laws, including, but not limited to, California Labor Code Section

1 3601 and 3602, and 33 U.S.C. Section 905.

2  
3 **TWENTIETH AFFIRMATIVE DEFENSE**

4 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
5 TODD alleges that at the time of the injuries alleged in the Complaint, Plaintiff was employed by  
6 persons other than TODD; was entitled to receive and did receive Workers' Compensation benefits  
7 from said employer(s) or their insurers; and that said employer(s) were negligent and careless in and  
8 about the matters referred to in Plaintiff's Complaint. Therefore, TODD is entitled to set-off any  
9 such benefits received by Plaintiff against any judgment rendered in Plaintiff's favor herein, and said  
10 employer(s) are barred from any recovery by lien or otherwise against TODD in connection with this  
11 matter.

12 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

13 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
14 TODD alleges that Plaintiff was advised, informed, and warned of any purported hazards and/or  
15 dangers, if any, associated with the normal and foreseeable use, handling, and storage of the product,  
16 substance and equipment described in the Complaint. Plaintiff knew, or in the exercise of ordinary  
17 care, should have known, of the purported risks and hazards involved in the undertaking alleged, but  
18 nevertheless, willingly, voluntarily and knowingly consented to assume such purported risks and  
19 hazards incident to said undertaking and conduct, at the time and place alleged in said Complaint, all  
20 of which proximately caused and contributed to any loss, injury or damages alleged herein.  
21 Therefore, Plaintiff's damages, if any, are barred or reduced by the percentage of all responsibility  
22 attributable to Plaintiff.

23 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

24 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
25 TODD alleges that at all times relevant to the matters alleged in Plaintiff's Complaint, Plaintiff's  
26 employer(s), including the United States Navy, were sophisticated users of asbestos-containing  
27 products, and said employer(s)' negligence in providing said product(s) to its employees was a  
28 superseding and/or intervening cause of Plaintiff's injuries, if any there were.

1  
2 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

3 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
4 TODD alleges that there was no concert of action among TODD and other Defendants to this action  
5 and that any alleged liability or responsibility of TODD, which is denied, is minimal in proportion  
6 to the alleged liability and responsibility of other persons and entities including the other Defendants  
7 herein. Plaintiff should therefore be limited to seeking recovery from TODD for the proportion of  
8 alleged injuries and damages for which TODD is allegedly liable or responsible, all such alleged  
9 liability and responsibility being denied.

10 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

11 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION, to  
12 the extent the Complaint alleges that TODD has "market-share liability" or "enterprise liability," the  
13 Complaint fails to state facts sufficient to constitute a cause of action against TODD.

14 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

15 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
16 TODD alleges that it is entitled to set-off from all settlements, judgments, or similar amounts received  
17 by Plaintiff, against any judgment rendered against it in Plaintiff's favor herein.

18 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

19 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
20 TODD alleges, in accordance with Section 1431.2 of the Civil Code, known as the Fair Responsibility  
21 Act of 1986, that if Plaintiff's Complaint states a cause of action, each Defendant is liable, if at all,  
22 only for those non-economic damages allocated to each in direct proportion to each Defendant's  
23 percentage of fault, if any. TODD requests a judicial determination of the amount of non-economic  
24 damages, if any. TODD also requests a judicial determination of the amount of non-economic  
25 damages, if any, allocated to TODD in direct proportion to TODD's percentage of fault, if any, and  
26 a separate judgment in conformance therewith.

27 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

28 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,

1 TODD alleges that the damages and injuries, if any, were proximately caused or contributed to, in  
2 whole or in part, by the negligence or fault or other acts and/or omissions of persons or entities other  
3 than TODD, for which TODD is not responsible.

4 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

5 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
6 TODD alleges that neither the Complaint nor any purported causes of action alleged therein state facts  
7 sufficient to entitle Plaintiff to an award of punitive damages against TODD.

8 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

9 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
10 TODD alleges that Plaintiff is not entitled to recover punitive or exemplary damages from TODD  
11 and that such damages are violative of the Constitutions of the United States of America and of the  
12 Constitution of the State of California.

13 **THIRTIETH AFFIRMATIVE DEFENSE**

14 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
15 TODD alleges that Plaintiff's instant action is barred or, alternatively, merged into a prior cause of  
16 action for which Plaintiff has previously sued upon, recovered, and dismissed with prejudice,  
17 thereby requiring a complete extinguishment of the instant action due to the doctrines of Res Judicata  
18 and Collateral Estoppel.

19 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

20 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
21 TODD alleges that Plaintiff's instant action is barred and discharged, pursuant to Title 11 U.S.C.  
22 Section 1141(d), and that Plaintiff's action violates the pending injunction against such claims that  
23 exists, by operation of law, pursuant to Title 11 U.S.C. Section 524(a)(2).

24 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

25 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION to  
26 Plaintiff's Complaint, TODD alleges that its materials and/or products were manufactured, produced,  
27 supplied, installed, sold, and distributed pursuant to a contract with the United States government,  
28 and that any recovery by Plaintiff on the Complaint filed herein is barred by consequence of the

1 judicially recognized doctrine of immunity conferred upon that contractual relationship, and any  
2 occurrences arising therefrom.

3  
4 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

5 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION to  
6 Plaintiff's Complaint, TODD alleges that the state-imposed duty upon TODD significantly conflicts  
7 with an identifiable federal interest or policy and, therefore, is displaced under the holding of *Boyle*  
8 *v. United Technologies*, 487 U.S. 500 (1988).

9 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

10 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
11 TODD alleges that Plaintiff did not reasonably rely on any representation, disclaimer, warranty or  
12 other act or omission of TODD.

13 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

14 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
15 TODD alleges that Plaintiff was not in privity of contract with TODD, and said lack of privity bars  
16 recovery herein upon any theory of warranty.

17 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

18 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
19 TODD alleges that Plaintiff named TODD in this litigation without reasonable product identification  
20 and without reasonable investigation. Accordingly, pursuant to California Code of Civil Procedure  
21 Section 128.5, TODD requests reasonable expenses, including attorney's fees incurred by TODD, as  
22 a result of the maintenance of this bad-faith litigation.

23 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

24 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
25 TODD alleges that Plaintiff has released, settled, entered into an accord and satisfaction, or  
26 otherwise compromised his claims herein, and, accordingly, said claims are barred by operation of  
27 law.

28 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

1 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
2 TODD is presently without sufficient knowledge or information upon which to form a belief as to  
3 whether it may have additional, as yet unknown, affirmative defenses. Accordingly, TODD reserves  
4 the right to assert additional affirmative defenses in the event discovery indicates it would be  
5 appropriate.

6 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

7 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
8 TODD denies any and all liability as a successor, predecessor, predecessor in business, predecessor  
9 in a product line or portion thereof, parent, "alter ego," subsidiary, wholly or partially owned, by or  
10 the whole or partial owner or member in any entity which researched, studied, manufactured,  
11 fabricated, designed, modified, labeled, assembled, distributed, leased, bought, offered for sale,  
12 supplied, sold, inspected, tested, authorized, approved, certified, facilitated, promoted, represented,  
13 endorsed servicing, installed, contracted for installation, repaired, marketed, warranted, rebranded,  
14 manufactured for others, packaged, specified, required, mandated, or otherwise directed and/or  
15 facilitated the use of, or advertised a certain product, namely asbestos, and/or other products  
16 containing asbestos.

17 **FORTIETH AFFIRMATIVE DEFENSE**

18 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
19 TODD alleges that the claims asserted by Plaintiff were proximately caused by a superseding and  
20 intervening cause.

21 **FORTY-FIRST AFFIRMATIVE DEFENSE**

22 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
23 TODD alleges that the claims asserted by Plaintiff were not a substantial factor in bringing about the  
24 loss, injury or damages alleged in the Complaint.

25 **FORTY-SECOND AFFIRMATIVE DEFENSE**

26 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
27 TODD alleges that Plaintiff is barred from recovery from TODD in that the product allegedly  
28 supplied, distributed, manufactured and/or sold by TODD, if any, was in conformity with the existing

1 state-of-art applicable at the time of their manufacture, sale, formulation or distribution and, thus,  
2 such product was not defective in any manner.

3 **FORTY-THIRD AFFIRMATIVE DEFENSE**

4 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
5 TODD alleges that the product allegedly supplied, distributed, manufactured and/or sold by TODD,  
6 was properly designed, manufactured, and fit for the purpose for which they were intended. Said  
7 product was improperly maintained, misused, and/or abused by Plaintiff and/or others, and  
8 proximately caused Plaintiff's alleged loss, injury or damages. Such misuse, abuse or improper  
9 maintenance was not foreseeable to TODD. Therefore, Plaintiff's damages, if any, are barred or  
10 reduced by the percentage of all responsibility attributable to Plaintiff and/or others.

11 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

12 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
13 TODD alleges that its alleged actions, which are the subject of the Complaint, were lawful.

14 **FORTY-FIFTH AFFIRMATIVE DEFENSE**

15 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
16 TODD alleges that it presently has insufficient knowledge and/or information on which to form a  
17 belief as to whether it may have additional, as yet unstated, defense available. TODD reserves the  
18 right to assert additional defenses in the event that they would be appropriate.

19 **FORTY-SIXTH AFFIRMATIVE DEFENSE**

20 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
21 TODD alleges that TODD has fully performed any contractual, statutory or other alleged duties to  
22 Plaintiff, if any such duties were owed, and Plaintiff is thus barred from recovery.

23 **FORTY-SEVENTH AFFIRMATIVE DEFENSE**

24 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
25 TODD alleges that Plaintiff's damages against TODD are speculative, and Plaintiff is barred from  
26 asserting any such damages against TODD.

27 **FORTY-EIGHTH AFFIRMATIVE DEFENSE**

28 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,



1 TODD alleges that it was justified in undertaking actions to protect its interests and acted at all times  
2 reasonably and in good faith and, thus, its conduct as alleged in the Complaint was justified or  
3 excused.

4 **FORTY-NINTH AFFIRMATIVE DEFENSE**

5 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
6 TODD alleges that other parties are responsible either directly or indirectly for liability for Plaintiff's  
7 loss, injuries or damages, and in the event that TODD is held liable for Plaintiff's loss, injury or  
8 damages, such persons or entities are obligated to reimburse TODD for all costs and expenses  
9 resulting from the present lawsuit.

10 **FIFTIETH AFFIRMATIVE DEFENSE**

11 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
12 TODD alleges that, at the time the product, substance and equipment described in the Complaint left  
13 the custody and control of TODD, it was not unreasonably dangerous or defective, of good  
14 merchantable quality, and performed as safely as an ordinary consumer would have expected at the  
15 time of use.

16 **FIFTY-FIRST AFFIRMATIVE DEFENSE**

17 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION,  
18 TODD alleges that, the product, substance and equipment described in the Complaint, was improperly  
19 maintained and cared for by Plaintiff and/or the owners of the product(s), and such improper care and  
20 maintenance created any defect, if any, which was the proximate and legal cause of Plaintiff's loss,  
21 injury or damages, if any. Such improper maintenance and care was not foreseeable to TODD.  
22 Therefore, Plaintiff's damages, if any, are barred or reduced by the percentage of all responsibility  
23 attributable to Plaintiff and/or the owners of the product(s) by virtue of said improper maintenance  
24 and care.

25 **WHEREFORE**, TODD prays for judgment as follows:

- 26 1. That Plaintiff take nothing by reason of his Complaint herein;  
27 2. That judgment be entered in favor of TODD;  
28 3. For costs of suit incurred herein;

- 1           4.     For appropriate credits and set-offs arising out of any payment of Workers'
- 2                 Compensation benefits as alleged above;
- 3           5.     For a judicial determination of the amount of non-economic damages, if any,
- 4                 allocated to TODD in direct proportion to TODD's percentage of fault, if any, and
- 5                 a separate judgment in conformance therewith; and
- 6           6.     For such other and further relief as the Court may deem just and proper.

7 DATED: March 24, 2008

YARON & ASSOCIATES

8  
9 By: 

10 GEORGE D. YARON  
11 KEITH E. PATTERSON  
12 GOLI MAHDAVI  
13 ALECIA E. COTTON  
14 Attorneys for Defendant  
15 TODD SHIPYARDS CORPORATION  
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1 GEORGE D. YARON, ESQ. (State Bar #96246)  
2 KEITH E. PATTERSON, ESQ. (State Bar #225753)  
3 GOLI MAHDAVI, ESQ. (State Bar #245705)  
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9 Facsimile: (415) 658-2930

10 Attorneys for Defendant  
11 TODD SHIPYARDS CORPORATION

12  
13 IN THE UNITED STATES DISTRICT COURT  
14  
15 FOR THE NORTHERN DISTRICT OF CALIFORNIA

16 RUDOLPH HANNA,

17 Plaintiff,

18 vs.

19 GENERAL ELECTRIC COMPANY,  
20 TODD SHIPYARDS CORPORATION,  
21 NATIONAL STEEL AND  
22 SHIPBUILDING COMPANY,

23 Defendants.

CASE NO. CV 08-0980 EDL

**DEFENDANT TODD SHIPYARDS  
CORPORATION'S CERTIFICATE OF  
INTERESTED ENTITIES OR PERSONS**

24 Pursuant to Civil Local Rule 3-16, the undersigned certifies that as of this date, other than  
25 the named parties, there is no such interest to report.

26 DATED: March 24, 2008

YARON & ASSOCIATES

By: 

GEORGE D. YARON  
KEITH E. PATTERSON  
GOLI MAHDAVI  
ALECIA E. COTTON  
Attorneys for Defendant  
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Attorneys for Defendant  
TODD SHIPYARDS CORPORATION

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RUDOLPH HANNA,

Plaintiff,

vs.

GENERAL ELECTRIC COMPANY,  
TODD SHIPYARDS CORPORATION,  
NATIONAL STEEL AND  
SHIPBUILDING COMPANY,

Defendants.

CASE NO. CV 08-0980 EDL

**DEMAND FOR JURY TRIAL**

TO THE CLERK OF THE ABOVE-ENTITLED COURT AND ALL PARTIES


HEREIN:

PLEASE TAKE NOTICE that Defendant TODD SHIPYARDS CORPORATION hereby  
demands a trial by jury in the above-entitled action.

DATED: March 24, 2008

YARON & ASSOCIATES

By:

  
GEORGE D. YARON  
KEITH E. PATTERSON  
GOLI MAHDAVI  
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6 Attorneys for Defendant  
TODD SHIPYARDS CORPORATION

9 BEFORE THE JUDICIAL PANEL ON MULTI-DISTRICT LITIGATION

12 IN RE: ASBESTOS PRODUCTS LIABILITY ) **MDL DOCKET NO. 875**  
LITIGATION (NO. VI), )  
13 )  
This Document Relates to: )  
14 RUDOLPH HANNA vs. )  
GENERAL ELECTRIC COMPANY, et al. )  
15 )

16 IN THE UNITED STATES DISTRICT COURT  
17 FOR THE NORTHERN DISTRICT OF CALIFORNIA

18 RUDOLPH HANNA, ) Case No. CV 08-0980 EDL  
19 )  
Plaintiff, ) **DEFENDANT TODD SHIPYARDS**  
20 vs. ) **CORPORATION'S NOTICE OF TAG-**  
 ) **ALONG ACTION**  
21 )  
GENERAL ELECTRIC COMPANY, ) Multi-District Rule 7.5(e)  
22 TODD SHIPYARDS CORPORATION, )  
NATIONAL STEEL AND )  
23 SHIPBUILDING COMPANY, )  
 )  
24 )  
Defendants. )  
25 )

26 TO THE CLERK OF THE ABOVE-ENTITLED COURT, AND TO ALL PARTIES AND  
27

1 THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on July 29, 1991, the Judicial Panel of Multi-District  
3 Litigation entered an order transferring all asbestos cases pending in the federal courts to the United  
4 States District Court, Eastern District of Pennsylvania, for coordinated or consolidated pretrial  
5 proceedings pursuant to 28 U.S.C. §1207 ("MDL Transfer Order"). The MDL Transfer Order also  
6 applies to "tag-along actions," which refers to a civil action pending in a District Court and involving  
7 common questions of fact with actions previously transferred under Section 1407 by the Judicial  
8 Panel of Multi-District Litigation pursuant to a January 17, 1991 Order to Show Cause. See Multi-  
9 District Litigation Rules ("MDL Rules"), Rule 11.

10 Pursuant to MDL Rule 7.5(c),

11 Any party or counsel in actions previously transferred under Section  
12 1407 or under consideration by the Panel for transfer under Section  
13 1407 shall notify the Clerk of the Panel of any potential "tag-along  
actions" in which that party is also named or in which that counsel  
appears.

14 Defendant Todd Shipyards Corporation hereby notifies the Court that the above-entitled  
15 action involves all or a material part of the same subject matter as another action which is pending  
16 in another federal court. Accordingly, the above-entitled action is considered a "tag-along action,"  
17 subject to transfer to the United States District Court for the Eastern District of Pennsylvania,  
18 because the action involves alleged injuries due to exposure to asbestos. The Clerk of the Panel may  
19 either (1) enter a conditional transfer pursuant to MDL Rule 7.4(a) or (2) file an order to show cause  
20 why this action should not be transferred pursuant to MDL Rule 7.5(b).

21 DATED: March 24, 2008

YARON & ASSOCIATES

22 By:   
23 \_\_\_\_\_

24 GEORGE D. YARON  
25 KEITH E. PATTERSON  
26 GOLI MAHDAVI  
27 ALECIA E. COTTON  
Attorneys for Defendant  
TODD SHIPYARDS CORPORATION